



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 127, 403, 501, and 503

[EPA-HQ-OECA-2009-0274; FRL-9908-58-OECA]

RIN: 2020-AA47

NPDES Electronic Reporting Rule

AGENCY: Environmental Protection Agency.

ACTION: Request for further comment.

SUMMARY: On July 30, 2013, the Environmental Protection Agency (EPA) proposed the NPDES Electronic Reporting Rule that would require electronic reporting instead of current paper-based NPDES reports. This action would modernize NPDES reporting, save time and resources for regulated entities and regulatory agencies, better protect the Nation's waters by improving compliance, and provide the public with access to information that affects their communities. The proposal would enhance transparency and accountability by providing regulatory agencies and the public with more timely, complete, accurate, and nationally-consistent data about the NPDES program and potential sources of water pollution. The benefits of this proposed rulemaking should allow NPDES-authorized programs in states, tribes, and territories to shift precious resources from data management activities to solving issues that threaten human health, water quality, and noncompliance issues. As a result of comments received on the proposed rule, we are soliciting further comments by opening a new public comment period.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2009-0274 by one of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* docket.oeca@epa.gov, Attention Docket ID No. EPA-HQ-OECA-2009-0274.
- *Mail:* Send the original and three copies of your comments to: U.S. Environmental Protection Agency, EPA Docket Center, Enforcement and Compliance Docket, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. EPA-HQ-OECA-2009-0274. In addition, if applicable, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW, Washington, DC 20503.
- *Hand Deliver:* Deliver your comments to: EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC, 20004, Attention Docket ID No. EPA-HQ-OECA-2009-0274. Such deliveries are only accepted during the EPA Docket Center's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OECA-2009-0274. EPA's policy is that all comments received by the deadline will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do

not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it within the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment, and, if applicable, with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket, please visit the EPA Docket Center homepage at <http://www.epa.gov/dockets/>.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard-copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard-copy at the Enforcement and Compliance Docket in the EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC, 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Docket for the Office of Enforcement and Compliance Assurance (OECA) is (202) 566-1752. Docket visitors are required to show

photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and are subject to search. Visitors will be provided an EPA visitor's badge that must be visible at all times in the building and returned upon departure. The "User Guide to the Docket for the NPDES Electronic Reporting Rule [DCN 0104]" provides easy to follow instructions on how to access documents through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Messrs. Andrew J. Hudock (202-564-6032) or Carey A. Johnston (202-566-1014), Office of Compliance (mail code 2222A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC, 20460; e-mail addresses: hudock.andrew@epa.gov or johnston.carey@epa.gov.

SUPPLEMENTARY INFORMATION:

How is this document organized?

The outline of this document follows the following format:

- I. General Overview of the Supplemental Notice and Proposed Rule
- II. Overview of Public Comments
- III. Discussion of Key Issues Identified in Public Comments
- IV. Matters for Which Comments Are Sought
- V. Outreach
- VI. Executive Orders 12866 and 13563

I. General Overview of the Supplemental Notice and Proposed Rule

A. Supplemental Notice

The U.S. Environmental Protection Agency (EPA) proposed the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule on July 30, 2013 (78 FR 46005). The rule is explained in greater detail below. EPA received many comments on the proposed rule, from a variety of stakeholder groups, and the comments were generally supportive of electronic reporting as modern and efficient. However, some comments raised issues regarding aspects of the proposed implementation and operation of the rule. In this supplemental notice, EPA is soliciting additional comment on the following issues raised by commenters: (1) initial recipient status; (2) the use of the State Readiness Criteria and the possibility of EPA requiring the electronic submission of NPDES program data to EPA when authorized states, tribes, and territories have not successfully implemented electronic reporting; (3) implementation plan schedule; (4) copy of record; and (5) modifications of state NPDES regulations and statutes. We are also soliciting comment on Cross-Media Electronic Reporting Rule (CROMERR) implementation, electronic reporting for the Concentrated Animal Feeding Operations (CAFOs) and stormwater sectors, and the economic analysis.

EPA will consider comments on any other aspects of the proposed rule. This notice opens a new public comment period. This notice is an opportunity for EPA to identify key issues raised by comments, clarify any misunderstandings about the proposed rule, and discuss possibilities for how EPA might modify the rule to address issues raised by stakeholders. This notice is not, however, intended to respond to all comments submitted; EPA will respond to all substantive comments when it takes final action on the proposed rule. There is no need to re-submit comments already submitted to EPA's docket for the proposed rule.

B. Proposed Rule

Pursuant to the Clean Water Act (CWA), 33 U.S.C. 1251 et. seq., the U.S. Environmental Protection Agency (EPA) proposed the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule on July 30, 2013 (78 FR 46005). The proposed rule does not add to what is currently required to be reported by regulated entities under the existing Federal NPDES program regulations; it would only change how that information is to be reported. In particular, the proposed rule would substitute electronic reporting for certain paper-based reports. Over the long term, this should save time and resources for regulated entities, states, tribes, territories, and EPA while improving compliance and better protecting the Nation's waters. The proposed rule would require regulated entities and regulators to use existing, available information technology to electronically report information and data related to the NPDES program in lieu of filing paper reports.

The proposed rule would allow improvements to be made to the transparency and usefulness of information about regulated entities and permitting, compliance, and enforcement activities in each state through the use of available technology to electronically report facility, discharge, monitoring, compliance, and enforcement data; and providing more complete, accurate, and timely data to the public. Improving public access to this timely and complete information would help inform and empower communities. EPA is soliciting comment on how to improve public accessibility and usability of the data. EPA notes that this proposed rule does not change the Agency's public disclosure regulations (40 CFR 2).

This proposed rule would require that certain reports currently submitted on paper (i.e., Discharge Monitoring Reports (DMRs), Notices of Intent to discharge in compliance with a general permit, other general permit waivers, certifications, and notices of termination of

coverage, and some program reports) be submitted electronically by NPDES-regulated entities to EPA through EPA's Central Data Exchange (CDX) or to the authorized state, tribe, or territory NPDES program, or to EPA through EPA's Central Data Exchange (CDX). Importantly, while the proposed rule changes the method by which information on NPDES notices of intent for coverage under general permits, facility discharges, monitoring of compliance, facility reports, and enforcement responses is provided (i.e., electronic rather than paper-based), it does not increase the amount of information required from NPDES-regulated entities under existing regulations. Similarly, though it changes the method through which citizens may access this information, this rule only affects information already required by law to be available to the public.

States, tribes, and territories that are authorized to implement the NPDES program are the unique sources of certain key information regarding the regulated facilities. For example, states have facility information from NPDES individual permit applications, permit information including limits and permit conditions, compliance determination information including that from inspections, and enforcement response information. Under this proposed regulation, authorized NPDES programs would be required to share this NPDES program implementation information electronically with EPA.

The proposed rule, in conjunction with EPA's current public data access tools, would provide a more complete and easily accessible set of facility, permit, compliance, and enforcement data to the public. This would provide a powerful incentive for government and regulated entities to maintain and improve their performance. This can elevate the importance of compliance information and environmental performance within regulated entities and provide an opportunity for them to quickly address any noncompliance. This can also improve access to

permit and compliance and enforcement action data in emergency situations (see DCN 0105). It provides the opportunity for two-way communication between regulatory agencies and regulated facilities to immediately address data quality issues and to provide compliance assistance or take other action when potential problems are identified. Complete and accurate data would also allow EPA to evaluate performance across authorized programs.

The requirement of electronic reporting of NPDES information is expected to result in reductions in burden and transaction costs. Tracking data electronically is less expensive, more efficient, more accurate, and better able to support program management decisions than paper tracking (see July 30, 2013; 78 FR 46015-17).

II. Overview of Public Comments

EPA received 170 public comments on the proposed rule from a variety of stakeholder groups. The comments were generally supportive of electronic reporting as modern and efficient, but raised issues regarding aspects of the proposed implementation and operation of the rule. Table II-1 provides an overview on the public comments on the proposed rule. The largest number of public comments (by pages) came from government agencies with industrial stakeholders contributing most of the remaining comments. Many of the industrial comments came from the agricultural sector.

Table II-1: Number of Public Comments: Submissions, Pages, and Comment Excerpts

Commenter Type	Number of Submissions	Number of Comment Pages
Anonymous or Individual Person	32	44
Environmental Advocacy Organization	3	22
Government (Local)	28	114

Government (State)	39	308
Government (Federal)	2	5
Industry (Misc.)	39	188
Industry (Agriculture)	25	163
Industry (Software Vendors)	2	6
Total:	170	850

EPA has reviewed all of these comment submissions and identified the key issues raised by commenters. The following sections describe some of these key comments in more detail.

III. Discussion of Key Issues Identified in Public Comments

A. Implementation Plan

EPA received many comments from states and NPDES-regulated entities on the proposed implementation plan and is considering possibilities to address these concerns. Most of these comments focused on the following issues: (1) initial recipient status; (2) the use of the State Readiness Criteria and the possibility of EPA requiring the electronic submission of NPDES program data to EPA when authorized states, tribes, and territories have not successfully implemented electronic reporting; (3) implementation plan schedule; (4) copy of record; and (5) modifications of state NPDES regulations and statutes. Complete details on the implementation plan are in the proposed rule (July 30, 2013; 78 FR 46047). The following are the most frequently discussed issues related to the implementation plan.

1. Initial Recipient Status

Some comments evidenced confusion about the concept of the ‘Initial Recipient,’ a term defined in the proposed rule at 40 CFR 127.2(b). EPA would like to provide some additional clarity in this supplemental notice. In general terms, the Initial Recipient is the first to receive

electronically reported NPDES program data and could be the authorized state, tribe, or territorial NPDES program or EPA. The proposed rule also requires authorized NPDES programs and EPA to share NPDES program data (i.e., Appendix A to Part 127) with each other on a regular schedule.

Under the proposed rule, NPDES-regulated entities would submit NPDES program data to the designated initial recipient. EPA's goal is to help all states be the initial recipient for any data group (e.g., DMRs) for which they would like to first receive the data. In the proposed rule, Section 127.27 outlines the process for requesting the designation of initial recipient.

- An authorized state, tribe, or territory may request to be the initial recipient of electronic NPDES information from NPDES-regulated facilities for specific NPDES data groups by submitting a request to EPA. [Section 127.27(a)]
- This request shall identify the specific NPDES data groups for which the state, tribe, or territory would like to be the initial recipient of electronic NPDES information, a description of how its data system will be compliant with 40 CFR part 3 and 40 CFR part 127, and the date or dates when the state, tribe, or territory will be ready to start receiving this information.

There is also a process in Section 127.27(d) for helping states become the initial recipient. As noted in the proposed Section 127.27(d)(4), EPA will “work with the Director of the authorized NPDES program to remediate all issues identified by EPA that prevent the authorized NPDES program from being the initial recipient. When all issues identified by EPA are resolved and the authorized state, tribe, or territory is the initial recipient, EPA shall update the initial recipient listing in 127.27(c) and publish this listing on its website and in the *Federal Register*.”

Comments on the Initial Recipient term came from state and local governments, as well as from NPDES-regulated entities. Most of these commenters misunderstood the Initial Recipient designation as being contingent on the State Readiness Criteria. The following discussion explains the relationship between these two related but distinctly different terms. The term “initial recipient” means the governmental entity, either the state or EPA, who first receives the electronic reports. EPA proposed to maintain the initial recipient list for each state and each NPDES data group and publish this list on its website and in the *Federal Register*. EPA’s decision to designate an authorized state, tribe, or territory as the initial recipient for NPDES program data is limited to the authorized program’s description of “how its data system will be compliant with 40 CFR part 3 and 40 CFR part 127, and the date or dates when the state, tribe, or territory will be ready to accept NPDES information from NPDES-regulated facilities in a manner compliant with 40 CFR part 3 and 40 CFR part 127” [see 40 CFR 127.27(a)]. By contrast, the “State Readiness Criteria” are used when EPA is deciding whether to require electronic reporting through an Information Collection Request (see July 30, 2013, 78 FR 46048). The 90 percent participation rate aspect of the State Readiness Criteria would not affect EPA’s determination of the Initial Recipient as detailed in Section 127.27. For example, a state can be listed as the Initial Recipient for receiving DMRs even if the electronic DMR participation rate in that state is less than 90 percent.

EPA proposed using *Federal Register* notices and its website to provide notification to NPDES-regulated entities of the Initial Recipient status for each data group for each state. Commenters noted that EPA should improve this proposed notification system (e.g., notice by registered mail) because some NPDES-regulated entities (e.g., operators under the Construction General Permit) may not be aware of the *Federal Register* notices or EPA’s website. They also

noted that many regulated entities granted a temporary waiver from the proposed rule would not have the technology to gain access to these notification systems. EPA is soliciting comment on additional means for providing notice on the Initial Recipient status. See Section IV of this notice.

Finally, states requested clarification that they can obtain Initial Recipient status after the implementation phase of the rule (i.e., more than 120 days after the effective date of the final rule). See Section 127.27(a). EPA intends to make it clear in the final rule that a state NPDES program can initially elect for EPA to be the Initial Recipient and then at a later date seek EPA approval to change the initial recipient status from EPA to the authorized state, tribe, or territory. EPA would like to provide this flexibility to NPDES programs as EPA's preference is to defer to the authorized NPDES programs on how the NPDES program data from regulated entities should be routed when electronic reporting can be properly implemented (e.g., use of CROMERR-compliant tools). EPA is focused on changing NPDES reporting from paper submission to proper electronic submissions, not in becoming the Initial Recipient.

2. State Readiness Criteria

Under the proposal, a complete set of electronic information for the regulated universe covered by this proposed rule would be required two years after the effective date of the final rule. The Agency would seek to collect these data directly from NPDES-regulated facilities only if not already being submitted electronically to the authorized state, tribe, or territory given the importance of complete, timely, and accessible NPDES program data to EPA states, tribes, territories, and the public.

EPA proposed three factors for the “State Readiness Criteria,” which EPA would use to determine when to “fill in the gaps” where NPDES-regulated entities are not yet fully reporting electronically edit NPDES program data:

- (1) Participation Rate: The authorized state, tribe, or territory has 90 percent participation rate by data group (i.e., NPDES-regulated entities submit timely, accurate, complete, and nationally consistent NPDES data using the NPDES program’s electronic reporting systems for a data group such as DMRs); and
- (2) Approved Electronic Reporting Systems: The electronic reporting systems used by the NPDES-regulated entity meet all of the minimum Federal reporting requirements for 40 CFR 3 (CROMERR) and 40 CFR 127 (NPDES Electronic Reporting Rule); and
- (3) Initial Recipient Status: EPA lists the state, tribe, or territory as the initial recipient for electronic NPDES information from NPDES-regulated entities on EPA’s website. Each authorized program will then designate the specific tools for these electronic submissions from their permittees. These designations are proposed to be made separately for each NPDES data group (see 40 CFR 127.2(c) and 127.27).

In order to provide clearer distinction between the Initial Recipient and State Readiness Criteria terms, EPA solicits comment on eliminating the third factor in the State Readiness Criteria (i.e., Initial Recipient Status). The first and second factors in the State Readiness Criteria clarify that EPA’s collection of the data will be based on the participation rate and the use of CROMERR compliant tools.

As a means to “fill in the gaps” where NPDES-regulated entities are not yet reporting electronically, EPA is considering using its authority under CWA sections 101, 304(i), 308, 402(b), and 501 to require NPDES-regulated entities to electronically report NPDES program data to EPA. As proposed, EPA would use its existing authority under the CWA and current technology to facilitate electronic reporting using CWA authority and an Information Collection Request (ICR) to directly collect information from NPDES-regulated entities that are not participating in state electronic reporting according to the proposed rule’s implementation schedule. EPA anticipates this will not be a widespread occurrence as electronic reporting, over the long term, reduces burden for the reporter. If we encounter widespread non-compliance with the electronic reporting requirements, EPA will take that as a signal to evaluate the issue. EPA estimates that any use of this ICR will taper off over time as more NPDES-regulated entities utilize electronic reporting and as we learn more about electronic reporting. As previously noted, EPA electronically collecting these data from a subset of entities is independent of the Initial Recipient status of the authorized state, tribe, or territory. Authorized NPDES programs remain the data steward for any NPDES program data that they collect electronically or on paper. Under this proposal, EPA would be the data steward for the data it directly collects and will be responsible for resolving any data discrepancies.

EPA received comments from state programs and regulated entities that were concerned about EPA’s proposal to require electronic reporting directly to EPA where progress in electronic reporting to the state was not meeting the expected level. In particular, state programs noted the increased burden of the potential double reporting (such as paper submission of DMR to state, electronic submission to EPA) and the potential of conflicting data between the two submissions, roles of the state or EPA data stewards, and confusion over which submission is the

‘copy of record’). States appeared interested in participating in electronic reporting and pursuing some level of state readiness approval, but expressed concern about how long it might take to meet the 90 percent threshold for some data groups. One commenter noted that during the interim period, differing initial recipients for various data groups could be complicated or burdensome for some facilities.

In particular, states noted that they will likely not meet the 90 percent participation factor in the State Readiness Criteria within the proposed rule’s two-year implementation schedule. Commenters noted difficulties in seeking and obtaining CROMERR approval for their electronic reporting systems as well as difficulties in outreach and training for the large number of NPDES-regulated entities that will need to switch from paper to electronic reporting. EPA seeks comment on whether it should wait longer after the effective date of the final rule to begin evaluating participation rates. One commenter suggested gradually phasing in the participation rate factor in the State Readiness Criteria as follows: participation rate of 30 percent by the end of the first year, 60 percent by the end of the second year, and 90 percent by the end of the third year. EPA also seeks comment on this approach. EPA also seeks comment on whether, under one of the options above, it should maintain the current one-year schedule for the DMR data flow since many states and NPDES permittees are using NetDMR and eDMR tools. EPA is considering the possibility of a phased approach and solicits comment on the option of maintaining the one year schedule for the DMR data flow as well as a phased approach to measure participation rate as part of the State Readiness Criteria.

One state suggested that if the 90 percent participation factor is not met, EPA should use its CWA authority through use of an ICR to compel NPDES-regulated entities to electronically submit their NPDES program data to the authorized state, tribe, or territory rather than directly to

EPA. The commenter also suggested that the authorized state, tribe, or territory could use its enforcement discretion to refrain from enforcing conditions in the permit or other control mechanisms¹ that specify paper reporting as long as the regulated entity successfully reports its data electronically using the appropriate CROMERR-approved electronic reporting system. This would enable EPA and authorized states, tribes, and territories to realize the benefits of electronic reporting without requiring double reporting from regulated entities and coordinating two separate submissions.

Another state commenter also suggested that EPA calculate for each authorized NPDES program one DMR electronic submission participant rate for individually permitted facilities and another DMR electronic submission participant rate for facilities covered under general permits. The commenter suggested that there are important differences between individually permitted facilities, which tend to be the larger facilities with a continuous discharge like POTWs, and facilities covered under general permits, which tend to be more numerous and include construction stormwater sites that might need only temporary NPDES permit coverage. Some states also use different state agencies to manage specific industrial sectors (e.g., construction stormwater, mines, CAFOs) and these industrial sectors are often covered by general permits. EPA solicits comment on all of these potential alternatives (see Section IV).

With respect to the comment that the reporting environment could be complicated for some facilities if the state has not qualified as the initial recipient for all data groups, EPA notes that many NPDES-regulated entities currently submit NPDES program data to different

¹ Some NPDES-regulated entities (e.g., biosolids generators with no discharge, categorical industrial users) may not have an NPDES permit. These entities are controlled through direct application of EPA regulation or may be controlled through state regulation or other actions.

agencies. For example, most states are not authorized to implement the Federal Sewage Sludge program (40 CFR 503) and many POTWs in these states are required to submit DMR data to the state and the Annual Biosolids Program Report to EPA. Under the proposed rule, EPA would list the initial recipient for each data group for each state in the *Federal Register* and on its website so that regulated entities know to whom to submit their information. In addition, as noted in the proposal, EPA solicits comment on changing its regulations governing the standard conditions applicable to all NPDES permits by adding a new standard permit condition [see 40 CFR 122.41(l)(9)] that would require NPDES-regulated facilities to ensure that, for each type of electronic NPDES submission, the information is sent to the appropriate initial recipient, as identified by EPA, and as defined in 40 CFR 127.2(b). Authorized NPDES programs would include this requirement in all permits and control mechanisms.

Below are a few examples of how the proposed rule uses the Initial Recipient and State Readiness Criteria terms and more examples are in the docket (DCN 0106).

Example #1: EPA lists State X as being the Initial Recipient for DMRs and there are 1,000 facilities in this state that are required to submit DMRs. One year after the effective date of the final rule, 900 facilities in this state are correctly electronically submitting DMRs to the state (i.e., these DMRs contain all Appendix A data and are submitted in compliance with CROMERR). What actions will EPA take with respect to the 100 facilities that submitted their DMRs on paper to the state?

Answer: Under the proposed rule, EPA would take no actions to require electronic submissions of DMRs from these facilities because 90 percent of the facilities in this state that are required to submit DMRs are electronically submitting these DMRs in compliance with Part 127 (Appendix A data included) and Part 3 (CROMERR – authentication and encryption standards). The

electronic DMR submission to the state is the copy of record for the 900 facilities and the paper DMR submission to the state is the copy of record for the 100 facilities.

Example #2: Assume the same scenario as in Example #1 but now only 750 facilities in this state are correctly submitting DMRs to the state one year after the effective date of the final rule. What actions will EPA take with respect to the 750 facilities in this state that are correctly electronically submitting DMRs to the state and the 250 facilities that submitted their DMRs on paper to the state?

Answer: Under the proposed rule, EPA would take no actions to electronically collect DMRs from the 750 facilities that are electronically submitting these DMRs in compliance with Part 127 (Appendix A data included) and Part 3 (CROMERR – authentication and encryption standards) to the state as the Initial Recipient for DMRs. However, since the DMR electronic submission participation rate is less than 90 percent, EPA would use its CWA authority through use of an ICR to require electronic submission of DMR data from the 250 facilities who submitted their DMRs using paper reports. This means that these 250 facilities will be potentially filing their DMR twice: once on paper to the state (if required by their permit) and another time to EPA electronically. Once a facility is electronically submitting its DMRs to the state, the facility no longer is required to electronically report its DMRs directly to EPA. Additionally, the electronic DMR submission to the state is the copy of record for the 750 facilities and the paper DMR submission to the state is the copy of record for the 250 facilities. EPA also notes that authorized NPDES programs can help increase electronic reporting (and lower the instance of double reporting) by modifying or reissuing NPDES permits to include electronic reporting. EPA has proposed to allow authorized NPDES programs to do this through the minor modification process (see 40 CFR 122.63).

Example #3: Assume the same scenario as in Example #2 but, after some efforts by the state and EPA, the DMR electronic submission participation to the state is now at or above 90 percent. What actions will EPA take with respect to the 100 or fewer facilities that submitted their DMRs on paper to the state?

Answer: This is the same answer for Example #1.

Example #4: State X initially requests that EPA be the Initial Recipient for DMRs and there are 1,000 facilities in this state that are required to submit DMRs. One year after the effective date of the final rule 900 facilities in this state are correctly electronically submitting DMRs to EPA. What actions will EPA take with respect to the 100 facilities that submitted their DMRs on paper to the state?

Answer: This is the same answer for Example #1.

Another important consideration is that NPDES-regulated entities with temporary waivers are excluded from the State Readiness Criteria participation calculations. For example, if State X has 1,020 facilities that are required to submit DMRs and 20 of these facilities are granted temporary waivers from electronic reporting, then as a group at least 900 of the 1,000 DMR-submitting facilities without waivers [= $0.9 \times (1,020 - 20)$] need to electronically submit DMRs to State X in order to meet the DMR electronic submission participation threshold of 90 percent.

3. Implementation Plan Schedule

EPA proposed two phases for the implementation of electronic reporting with the first phase starting one year after the effective date of the final rule. Prior to this date, EPA will also work with authorized NDPDES programs in order to collect the necessary facility and permit

that supports electronic reporting. These necessary facility and permit data include data on facilities covered by general permits so that these general permit covered facilities can electronically submit their DMRs to their permitting authority and these permitting authorities can share these data with EPA. Likewise, EPA will also work with states to collect the necessary data to support electronic reporting for the second phase.

- Phase 1 Data (one year after the effective date of the final rule): EPA would electronically receive basic facility and permit information as well as state performance data including inspections, violation determinations, and enforcement actions. Additionally, EPA and states would electronically receive: (1) DMR information (if required by the NPDES permit) from NPDES-regulated entities; and (2) general permit reports [Notice of Intent to be covered (NOI); Notice of Termination (NOT); No Exposure Certification (NEC); Low Erosivity Waiver (LEW)] from facilities covered by Federally-issued general permits.
- Phase 2 Data (two years after the effective date of the final rule): In addition to Phase 1 data, EPA and states would receive: (1) general permit reports from facilities covered by state-issued general permit; and NPDES program reports (e.g., CAFO Annual Report, Pretreatment Program Annual Report).

As noted in the previous section of this notice, many states indicated that they likely would not be able to implement electronic reporting within two years of the effective date of the final rule. One commenter suggested that EPA should consider working with states to develop individual state plans with varying schedules for implementation based on each state's readiness and resources to implement electronic reporting. Another suggestion was to integrate electronic reporting into the permit requirements in the next permit cycle, as permits are reissued. Other

commenters suggested extending the implementation plan beyond two years. EPA also solicits comment on these alternatives.

Adding additional phases or time could include pushing the timing of Phases 1 and 2 back by a certain amount of time, or including additional phases for certain program areas. For instance, MS4 program reports could be moved to a third phase to give states and EPA more time to determine how best to incorporate these reports into an electronic format.

As noted in the proposed rule, using the NPDES permit cycle to implement electronic reporting would mean NPDES program data would not be fully available across all permits and states until 2022 at the earliest. Using the NPDES permit cycle to implement electronic reporting would mean that electronic reporting requirements would be incorporated into NPDES permits as they are re-issued. Using this approach would also mean that it would take approximately seven years to have data across all permits and states as authorized states, tribes, and territories will need two years to update their statutes and then it would take an additional five years for one NPDES permit cycle.² Additionally, there are a number of NPDES permits that are administratively continued with some permits that are ten or more years old (see DCN 0107). EPA identifies permits that are administratively continued beyond their expiration date as “backlogged.” EPA solicits comment on the option of EPA using its CWA authority through use of an ICR to require facilities operating under backlogged permits to electronically submit their NPDES program data.

As noted in the proposed rule, EPA considered but did not choose the permit renewal cycle as a means to phase in electronic reporting as that approach would delay significant benefits of electronic reporting (e.g., state savings and expedited access to complete NPDES

² See 40 CFR 123.62(e).

program data in an electronic format for EPA, states, tribes, and territories, regulated entities, and the public).

With respect to individual state implementation plans, if EPA were to choose this option EPA would likely establish a schedule for when these plans were due, the criteria it would use to review these plans, and the time period for states to submit subsequent revisions. EPA would look to see that each of these plans provides enough detail (e.g., tasks, milestones, roles and responsibilities, necessary resources) to ensure that EPA and states can work together to successfully implement electronic reporting. The details likely necessary for these plans include identifying: (1) all tasks for capturing and electronically processing facility and permit data; (2) all tasks for updating any state data systems; (3) technologies for electronic reporting systems and any necessary CROMERR approval; (4) technologies for transmitting and receiving Appendix A data to and from EPA; (5) schedule for updating state statutes, regulations, and NPDES permits; (6) schedule for training NPDES regulated entities on how to utilize electronic reporting systems; (7) roles and responsibilities; and (8) necessary resources and commitments. These implementation plans would need to be approved by the authorized NPDES Director (as defined in 40 C.F.R. 122.2). Under this option, EPA would use these plans to ensure all states are moving to electronic reporting as expeditiously as possible. EPA would also limit the amount of time that it will provide to states for full implementation, as EPA would like all stakeholders to realize the many benefits of electronic reporting in a timely manner. Finally, EPA would ask states to create contingencies in their implementation plans that might rely on EPA services and systems (e.g., NetDMR, NeT) if the state continually misses its own scheduled milestones.

4. Copy of Record

Several comments asked for clarification on how EPA’s proposed rule will affect the “copy of record” for NPDES data submissions. EPA is clarifying that the proposed rule does not change EPA’s authentication and encryption standards for electronic reporting. Below is a discussion of the copy of record as it pertains to the implementation of electronic reporting.

An important element of EPA’s authentication and encryption standards for electronic reporting is the “copy of record,” which is “a true and correct copy of an electronic document received by an electronic document receiving system, which copy can be viewed in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information.” See 40 CFR 3.3. A copy of record must:

- be a true and correct copy of the electronic document that was received, and it must be legally demonstrable that it is in fact a true and correct copy;
- include all the electronic signatures that have been executed to sign the document or components of the document;
- include the date and time of receipt to help establish its relation to submission deadlines; and
- be viewable in a human-readable format that clearly indicates what the submitter and, where applicable, the signatory intended that each of the data elements or other information items in the document means.

For such CROMERR compliant submissions, the copy of record is intended to serve as the electronic surrogate for what is commonly referred to as the paper submission with a “wet-ink” signature. The copy of record is meant to provide an authoritative answer to the question of

what was actually submitted and, as applicable, what was signed and certified in the particular case.

It is important to note that the use of an electronic reporting system may dictate where the electronic copy of record is retained. EPA's NetDMR and CDX for NeT contain the electronic copy of record for submissions made with these tools. Likewise, state electronic reporting systems will contain the electronic copy of record for submissions made with these state tools.

Under certain scenarios, as described in the previous sections, EPA may electronically collect NPDES program data directly from NPDES-regulated entities and these entities may also be making a paper submission of the same report with a "wet-ink" signature to the state. In these cases, the paper submission to the state with a "wet-ink" signature is the copy of record.

5. Modifications of State NPDES Regulations and Statutes

Several commenters requested clarification on the relationship between the implementation of electronic reporting and the schedule for any necessary modifications of state NPDES regulations and statutes. As indicated in the proposed rule, EPA estimated that some states may need to update their regulations or statutes to make clear that electronic reporting is required for the reports listed in Table 1 of Appendix A and that these electronic submissions must be compliant with Part 127 (including Appendix A) and Part 3 (CROMERR – authentication and encryption standards). Existing EPA regulations at 40 CFR 123.62(e) require that any updates to the authorized NPDES program take place within one-year of the effective date of the final rule (if no state statute change is required) and within two years of the effective date of the final rule (if a state statute change is required).

These regulatory and statutory updates are unrelated to EPA's decision on who can be the Initial Recipient for NPDES program data. However, if a state regulation or statute prohibits or

inhibits the electronic reporting of NPDES program data to the state, then this might lower the electronic reporting participation rate of NPDES-regulated entities. EPA will examine cases where there are low participation rates to determine the cause as there may be other issues beyond regulatory or statutory updates that need to be remedied. Under certain scenarios, as described in the examples above, these lower participation rates may lead EPA to electronically collect NPDES program data directly from NPDES-regulated entities when the entity is also making a paper submission of the same data to the state.

B. Cross-Media Electronic Reporting Regulation (CROMERR)

EPA's proposed rule (Part 127) requires that all electronic reporting systems that are used for implementing NPDES electronic reporting, whether already existing or to be developed by EPA and authorized NPDES programs, be compliant with EPA's Cross-Media Electronic Reporting Regulation (CROMERR).³ CROMERR sets performance-based, technology-neutral standards for systems that states, tribes, and local governments use to receive electronic reports from facilities they regulate under EPA-authorized programs and requires program modifications or revisions to incorporate electronic reporting. CROMERR also addresses electronic reporting directly to EPA.

EPA received a number of comments on various aspects of applying for, receiving approval and authorization, and implementing an electronic reporting system that complies with CROMERR. The comments can be divided into two key categories: (1) the process for CROMERR application approvals; and (2) the technical requirements for signature authentication. There are also two additional comment areas that require clarification: (1)

³ This EPA rule was promulgated in 2005 (see 40 CFR part 3).

whether a NPDES-regulated entity must submit a CROMERR application; and (2) EPA's requirement to change passwords at least once every 90 days.

1. Improving/Streamlining the Application Approval Process

The review and approval process for a CROMERR application allows 75 days for completeness review, and 180/360 days for new/existing systems for approval review. State and authorized program application preparation and amendments are not included in this timeframe. The actual timeframe may be shorter or longer. Many of the comments highlighted the seemingly conflicting timelines for implementation of the NPDES Electronic Reporting Rule with the CROMERR requirements. Commenters expressed concern that system development and CROMERR approval would not be possible within the 2-year rule implementation schedule and that authorized programs may not be able to maintain their status as the Initial Recipient of NPDES program data. Commenters also questioned whether they would be required to submit more than one CROMERR application if they rely on multiple tools for electronic reporting.

To address these concerns, EPA will be implementing several measures to streamline the CROMERR application submittal, review, and approval process.

- Standard Checklists and Forms. A standard checklist has been developed for EPA national systems (e.g., NetDMR, NPDES Electronic reporting system (NeT), CROMERR shared services, Attorney General Statement, and Signature Agreements) that can be modified for those using these services. These applications require the authorized programs to complete a small amount of state-specific information. The timeframes for these approvals are generally reduced to between 16 to 20 weeks. See: <http://www.epa.gov/cromerr/tools/index.html> and DCN 0109. Additionally, the CROMERR approval process for states choosing to use EPA's

NeT will have a significantly reduced approval process. EPA estimates that the approval process will be less than 60 days and with reduced submission requirements.

- Model CROMERR Application. There are approximately five model CROMERR applications that can be adopted by authorized programs. These models illustrate different CROMERR solutions that can be modified for another program's CROMERR implementation. Adopting a model CROMERR application will streamline the approval process to under 6 months. See: <http://www.epa.gov/cromerr/tools/index.html>.
- CROMERR Assistance and Training. EPA currently provides CROMERR assistance through online forms. EPA also provides direct help to prepare and complete the application as well as implement and integrate CROMERR services. In particular, for applicants that do not use the standard or model checklists and are building their own system, EPA has recently implemented a customer relationship management tool and additional technical support to provide triggers and reminders on due dates and actions to improve the timeframes. EPA intends to work with states to develop state specific plans on how to obtain CROMERR approval. See: <http://www.epa.gov/cromerr/training/index.html>. EPA is also creating a position that will interact with senior officials within the states and EPA by serving as the dedicated contact for states on the selection and implementation of the NPDES e-reporting tool, and serve as an advocate for states' CROMERR applications for the NPDES program from receipt to approval to ensure state applications are being addressed in a timely manner.

2. Technical Requirements for Signature Authorization

The second key area of CROMERR comments are the identity-proofing requirements for issuing electronic signature credentials. While the majority of the comments in this area focus on

the burden of maintaining paper copies of signature agreements, the time associated with conducting identity proofing, and the issuance of signature credentials, some stakeholders provided comments on the existing NPDES signatory requirements (40 CFR 122.22). EPA is not proposing to change the NPDES eligibility signatory requirements as these are beyond the scope of this rulemaking. The following are issues that relate to this NPDES Electronic Reporting Rule.

- Burden associated with high processing costs. EPA notes that all of the comments on the signature agreement requirements were based on the assumption of wet ink signatures on paper. However, EPA is now making available a paperless, real-time, electronic identity proofing service that reduces the application and validation time from days to minutes, and costs from dollars to cents. As noted above, as part of the Central Data Exchange (CDX) CROMERR services, electronic identity-proofing is available to regulatory authorities that do not wish to develop such a system of their own. This service can be invoked in a way that is transparent to the user and would allow users to begin using their electronic signature credentials in a single session.
- Burden associated with high turn-over and infrequent reporting. Electronic reporting systems can structure the agreements and the associated business processes so that only a single agreement is collected, once, from each user who is granted authority to electronically sign documents in the system. For EPA CDX systems, a user only has to register and complete the signature agreement once, and the credentials do not expire.⁴

3. CROMERR Requirements for a NPDES-Regulated Entity

⁴ Also note that once the single electronic signature agreement/credentials are established they can be used for reporting to multiple regulatory programs in addition to NPDES.

EPA received comments from POTWs, particularly from California, asking whether they would need to become CROMERR-certified in order to undertake electronic reporting. EPA is using this notice to confirm that under this proposed rule NPDES-regulated entities (e.g., POTWs) are not required to submit a CROMERR application to electronically report NPDES program data. It is the responsibility of the authorized NPDES programs receiving these electronically reported NPDES program data to obtain approval from EPA for their electronic reporting systems and processes in accordance with EPA's CROMERR requirements. Under the proposed rule, NPDES-regulated entities that electronically report their NPDES program data would use CROMERR-approved electronic reporting systems and processes. Authorized NPDES programs are responsible for submitting CROMERR applications for their electronic reporting system and NPDES-regulated entities are only required to complete the necessary signature requirements for that system.

EPA also notes that Subpart D of CROMERR requires that state, tribal or local government agencies (including POTWs) that receive, or wish to begin receiving electronic reports under their EPA-authorized programs (e.g., CWA pretreatment program) must apply to EPA for a revision or modification of those programs and obtain EPA approval.⁵ However, an important consideration is that the proposed rule does not require approved pretreatment programs to electronically collect NPDES program data from significant and categorical industrial users. Approved pretreatment programs may continue to collect NPDES program data from significant and categorical industrial users on paper or may elect to seek EPA approval for their CROMERR-compliant electronic reporting systems and processes.

⁵ For example, EPA recently approved of the City of Grand Rapids' (Michigan) request to revise its general pretreatment regulations to allow electronic reporting. See February, 13 2014, 79 FR 8701.

4. EPA Password Reset Requirement

EPA also received comments on the 90-day password reset requirement, suggesting that this frequency is too short and would be a burden for infrequent reporters. The 90-day password reset requirement is not a CROMERR requirement; rather, it is a long standing EPA security requirement that is used for all of our internal and external systems. However, most electronic reporting systems allow users to perform a password reset when their password has expired. For example, a regulated entity that only uses an electronic reporting system once a year can reset their password at the time of their electronic submission. A regulated entity would not need to access the electronic reporting system throughout the year simply to retain an active password or have an active password to initiate a password reset operation.

5. Relationship between CROMERR Requirements and the Initial Recipient Term

EPA also received comments on how the CROMERR requirements would affect the Initial Recipient requirements in the proposed rule (see Section 127.27). The following provides more explanation on the interaction between the CROMERR requirements and the Initial Recipient requirements in the proposed. If the Initial Recipient status for a particular state for a particular data group switches from the state to EPA, then the NPDES-regulated entities in that data group in that state would need to ensure they register with the appropriate CROMERR-compliant system. In this example, these NPDES-regulated entities would switch from using a state electronic reporting system to an EPA electronic reporting system (e.g., NetDMR, NeT). Likewise, if the Initial Recipient status for a particular state for a particular data group switches from EPA to the state, then those NPDES-regulated entities in that data group in that state would switch from an EPA electronic reporting system to a state electronic reporting system.

C. Concentrated Animal Feeding Operations (CAFO) Sector

EPA is clarifying the effects of this proposed rule on CAFOs in response to comments received that reflect misunderstanding about the proposed rule. The proposed rule would only require CAFOs with NPDES permits to submit information to permitting authorities that the Clean Water Act already requires them to provide. See 33 U.S.C. 1342. Additionally, this information already is publicly accessible pursuant to the Clean Water Act and its implementing regulations. The proposed rule would simply modernize the format through which permitted CAFOs would submit certain types of information (i.e., electronic submission as opposed to paper-based reporting). This modernized format should increase efficiencies for permitted CAFOs as well as regulators. Permitted CAFOs that lack suitable Internet access would be able to receive temporary waivers so that they would not be required to submit information electronically.

The following summary explains how the proposed rule would affect permitted CAFOs.

PERMITTED CAFO RESPONSIBILITIES	
TYPE OF SUBMISSION	SUBMISSION FORMAT
Individual permit applications and attached nutrient management plans (NMPs)	There is <u>no change</u> for the owner or operator, as a CAFO that is applying for an NPDES permit can submit forms and information in a paper format to the permitting authority. The proposed rule requires only selected data on the individual NPDES permit application (see Appendix A) to be electronically shared between states and EPA.
Notices of Intent to discharge in compliance with a general permit (NOIs)	CAFOs seeking coverage under an NPDES general permit would electronically submit these NOIs, unless a temporary waiver is granted by the authorized NPDES program. The proposed rule requires only selected data on the NOIs (see Appendix A) to be electronically shared between states and EPA.

NMPs attached to general permit NOIs	There is <u>no change</u> to the owner or operator, as CAFOs seeking coverage under an NPDES general permit can submit these data and information in a paper format to the authorized NPDES program. Authorized NPDES program may elect to electronically receive NMPs from CAFOs; however, this proposed rule does <u>not</u> require authorized NPDES programs to share these NMPs with EPA or require electronic submission of NMPs.
Annual reports and DMRs	Permitted CAFOs would electronically submit these compliance monitoring data, unless a waiver is granted by the authorized NPDES program. The proposed rule requires only selected data on the annual reports and DMRs (see Appendix A) to be electronically shared between states and EPA.

The following summary lists the only changes the proposed rule would make in authorized NPDES program responsibilities.

AUTHORIZED NPDES PROGRAM (GENERALLY STATES) RESPONSIBILITIES	
TYPE OF SUBMISSION	SUBMISSION FORMAT
Individual permit applications	Submit data listed in Appendix A to Part 127 electronically to EPA.
Inspection, violation determination, and enforcement action information	Submit data listed in Appendix A to Part 127 electronically to EPA.

As indicated in the tables above, contrary to concerns raised by some commenters, this proposed rule would not require electronic submission of NMPs. Nor would the proposed rule require NPDES-permitted CAFOs to submit any new information beyond what is already required in the current regulations.

In response to comments made expressing concerns that the proposed rule could infringe on the privacy of NPDES-permitted CAFO owners and operators or the facility, their employees or family members, EPA emphasizes that this rule would not require any information to be disclosed that is not already available to EPA and the public pursuant to existing legal

requirements. *See, e.g.*, 33 U.S.C. 1318, 1342(j); 40 CFR 122.21(f). Information that permitted CAFOs submit on their permit applications is required to be publicly available pursuant to CWA section 402(j), which requires that “[a] copy of each [NPDES] permit application and each [NPDES] permit ...be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.” See 33 USC 1342(j). Section 402(j) applies to all NPDES permit applications, including CAFO NPDES permits. In addition, CWA section 402 requires that states, tribes, and territories implementing NPDES programs provide for “public ... notice of each application for a permit and provide an opportunity for public hearing before a ruling on each such application.” See 33 USC 1342(a)(1), (b)(3).

Agricultural stakeholders also stated their concerns that a public national database with the location information of livestock operations could increase the risk of acts of terrorism at such operations. EPA notes that all of the information proposed to be submitted electronically is already publicly available today. The proposed rule is focused on modernizing existing reporting requirements by moving from paper to electronic submissions. The proposed rule does not change the data and information that NPDES-regulated entities are required to report or how EPA manages these data and makes it available to the public. Existing law requires that information submitted in connection with a permit application, as well as other effluent data, be available to the public. Permitted CAFOs and other sectors have been regulated under the NPDES program for over 40 years and permitted entities like CAFOs have been required to submit individual NPDES permit applications or NOIs for coverage under a NPDES general permit like any other facility seeking permit coverage. The proposed rule is only to modernize the data processed from paper to computer to make the program more efficient and effective.

Existing law also requires authorized NPDES programs (usually states) to share NPDES program information with EPA. Authorized NPDES programs are required to “keep such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of CWA or of this part.” 40 CFR 123.43(d). *See also* 40 CFR 123.41(a) (“Any information obtained or used in the administration of a state program shall be available to EPA upon request without restriction.”).

Pursuant to EPA’s NPDES data sharing policy, which dates back to 1985, authorized NPDES programs share data, including the following data, with EPA’s national NPDES program database for all NPDES-regulated entities (major and non-major facilities): facility name; SIC code(s), facility address, city, state, and zip code; facility latitude and longitude, facility owner’s first and last name and full mailing address. For example, EPA makes these data available now through its ECHO website (<http://echo.epa.gov>) and Envirofacts (<http://www.epa.gov/enviro/>).

EPA did not propose any changes to the way in which it protects confidential business information (CBI) in implementing electronic reporting. It is long-standing existing law that information required by an NPDES application form may not be claimed confidential. 40 CFR 122.7(b) and (c).

With respect to CAFO Annual Program Reports, EPA discussed how it will handle claims of CBI for these data in the 2003 CAFO rule (February 12, 2003, 68 FR 7233). In particular, the 2003 CAFO rulemaking states:

“EPA expects that the permitting authority will make this information available to the public upon request. This should foster public confidence that CAFOs are complying with the requirements of the rule. In particular, the information in the annual report will confirm that CAFOs have obtained coverage under an NPDES permit, are appropriately

controlling discharges from the production area, and have developed and are implementing a nutrient management plan... Under the existing regulations at 40 CFR Part 2, Subpart B, a facility may make a claim of confidentiality for information it must submit and EPA must evaluate this claim if it receives a request for the information from the public...Claims of confidentiality with respect to information submitted to the State will be processed and evaluated under State regulations.”

The proposed NPDES Electronic Reporting rule does not change the long-standing procedures for dealing with public and confidential information in the existing NPDES regulations.

Additionally, EPA has the capability of electronically collecting CBI through EPA’s CDX system and may use this capability to allow NPDES permitted CAFOs to securely submit their CAFO Annual Program Reports.⁶

Some commenters raised questions about the authority of states and EPA to inspect CAFOs. Section 308 of the CWA authorizes inspections of premises where effluent sources are located, 33 U.S.C. 1318(a)(B), and data gathering from point sources that discharge or may discharge, 33 U.S.C. 1318(a)(A), even if those facilities are not required to have a permit because they do not discharge. See also 33 U.S.C. 1342 (requiring that authorized state programs have the same authority to inspect, monitor, enter, and require reports as section 308 of the Act). States and EPA gather information from point sources, including CAFOs, that discharge pollutants or may discharge pollutants for a variety of purposes, including determining compliance with applicable effluent limitations and verifying that the CAFO is not in fact discharging without a permit. See 33 U.S.C. 1318.

⁶ For example, EPA electronically collects Pre-manufacture Notices (PMNs) from chemical manufacturers through EPA’s CDX system. These chemical manufacturers can claim these PMNs as CBI. See DCN 0116.

Stakeholders raised concerns about EPA posting information on unpermitted CAFOs and AFOs on EPA's public website. The Clean Water Act specifically identifies concentrated animal feeding operations as a type of "point source." See 33 USC 1362(14). The NPDES permit program regulates discharges of pollutants from point sources. It is important for authorized NPDES programs (generally states) to report inspection information on all facilities (permitted or unpermitted) to EPA, as they currently do, so that EPA can know that the state has inspected the facility and found either that there is no discharge and no permit is required or there is a discharge and a possible violation. This reporting also benefits the facility because it avoids a possibly duplicative EPA inspection.

In order to address comments regarding the privacy interests of an unpermitted CAFO and AFO that an authorized state NPDES program or EPA has assessed and found to have not violated the Clean Water Act, EPA is proposing a change to its current practice regarding the facility specific information it collects from states and posts to its ECHO website for these facilities (unpermitted CAFOs and AFOs that state inspectors found were not discharging and do not require an NPDES permit). EPA is proposing to mask all facility identifying information for this subset of facilities and only post the information submitted by states on the total number of inspections of these facilities by state.

EPA is proposing to make this change a year after the effective date of the final rule. EPA anticipates it will need a year after the final rule to coordinate with states on identifying the exact set of CAFOs and AFOs currently in EPA's data systems that qualify for this proposed facility specific information redaction and the necessary data management rules for future state inspections of CAFOs and AFOs. This proposed change addresses the concerns from agricultural stakeholders about posting facility specific information for CAFOs that are not discharging and

not required to have NPDES permits. EPA seeks comment on this proposed change and the proposed timing.

The following is an example of how EPA could mask facility name and location (address and latitude and longitude) as well as facility contact information (contact name and phone number) for its ECHO website. [Note: Each unpermitted CAFO and AFO that does not have a Clean Water Act violation as determined by the authorized state NPDES program or EPA would have a unique number as shown below in Facility #2.]

Facility #1 - Unmasked Information	Facility #2 - Masked Information
Show-Me State Animal Farm Location: 11300 Ozark Lane, Perryville, Missouri 63775 County: Perry Lat.: 37.836084, Long: -89.738644 Contact: Grant Wood Phone: 999-867-5309 Inspection(s): 3/14/2010 (no violation identified); 6/22/2014 (discharging without an NPDES permit)	Unpermitted CAFO/AFO-0000001 Location: Missouri County: Redacted from Website Lat./Lon.: Redacted from Website Contact: Redacted from Website Phone: Redacted from Website Inspection(s): 2/17/2009 (no violation identified); 5/25/2013 (no violation identified)

The above table is provided for illustration only. In this hypothetical example, the unpermitted CAFO shown in the column labeled “Facility #1 - Unmasked Information” would not have its facility and contact information displayed on EPA’s website until the weekly refresh of ECHO data from ICIS-NPDES after 22 June 2014, which is the date the state or EPA Region identified that the facility had a Clean Water Act violation (i.e., discharging without an NPDES permit) and entered these data into ICIS-NPDES. If an unpermitted CAFO does not have a Clean Water Act violation as determined by the authorized state NPDES program or EPA, then the facility and contact information would not be displayed on EPA’s ECHO website (see the column labeled “Facility #2 - Masked Information” in the above table).

EPA solicits comment on this approach. Additionally, under existing EPA regulations at 40 CFR Part 2, Subpart B, a facility, including any CAFO or AFO, may make a claim of

confidentiality for information it must submit to EPA or to the authorized State. These claims will be processed and evaluated under federal or State regulations, respectively.

Agricultural stakeholders also commented that electronic reporting of NPDES program data may provide a disincentive to seek NPDES permit coverage in order to keep information related to the facility and facility contact out of EPA's databases. EPA has a statutory duty to implement a permitting program for CAFOs that discharge. This proposed rule does not change the requirement that CAFOs discharging pollutants into waters of the United States are subject to NPDES regulation.

Finally, in response to comments received, EPA is soliciting comment on a few changes to CAFO data elements in Appendix A to Part 127 (see DCN 0108). EPA believes that these edits, generated from comments by states, make the revised Appendix A more clear and implementable (see DCN 0128 through 0142).

D. Stormwater Sector

EPA received a number of comments on how electronic reporting will be implemented for NPDES-regulated entities that manage stormwater. The following section describes these comments.

1. Municipal Separate Storm Sewer Systems (MS4s)

Polluted stormwater runoff is commonly transported through Municipal Separate Storm Sewer Systems (MS4s), from which it is often discharged untreated into local waterbodies. To prevent harmful pollutants from being washed or dumped into an MS4, regulated entities (e.g., municipalities) must obtain a NPDES permit and develop a stormwater management program. Under the proposed rule, MS4 regulated entities must electronically submit certain MS4 data.

These data include: (1) Notices of intent (NOIs) for coverage under a NPDES general permit; and (2) MS4 program reports.

NPDES general permits are most often used by NPDES permitting authorities for Phase II MS4s (i.e., smaller MS4s for which federal regulations were issued in 1999). The MS4-specific data elements related to NOI submissions are identified in Appendix A to 40 CFR part 127 at pp. 46093-46094 of the proposed rule. These MS4-specific data elements are in addition to basic facility and permit data that are also required to be submitted electronically, as identified in Appendix A to 40 CFR part 127 at pp. 46084-46088 of the proposed rule. In a separate data submission, the authorized NPDES program will also share MS4 information (e.g., basic facility, permit, and MS4-specific information) from individual NPDES permit applications with EPA.

EPA also proposed a requirement that MS4-regulated entities electronically submit their MS4 program reports, which is an existing compliance monitoring reporting requirement [see 40 CFR 122.42(c) and 40 CFR 122.34(g)(3)]. The required MS4-specific data elements from the MS4 program reports are identified in Appendix A to 40 CFR part 127 at pp. 46107-46108 of the proposed rule.

During the public comment period for the proposed rule, several commenters, particularly from local governments, provided EPA with MS4-related comments. Many of these commenters expressed concern about how EPA would implement electronic reporting for MS4 regulated entities. In particular, they noted that MS4 program reports are generally not uniform as each MS4 program implements its program differently. These commenters asked EPA to clarify its plans to standardize and electronically collect these data. EPA intends to use a combination of drop-down lists and text fields in its electronic reporting systems to effectively characterize the activities of the MS4 facilities for electronic reporting of NOIs and program

reports. An example of this flexibility can be seen in EPA's NOI form for Phase II MS4 regulated entities in Region 1 (see DCN 0110). EPA recognizes that requirements will vary from one state to another; therefore, the electronic reporting systems developed by EPA or by other parties will need to be adaptable to reflect the additional information that particular states may seek in addition to the data described in Appendix A to 40 CFR part 127.

Some commenters indicated that it would be helpful if the information provided in electronic NOIs could be used to "auto-fill" or pre-populate data submitted with MS4 program reports. EPA is interested in making electronic reporting as easy as possible and will review this suggestion as part of the development of its NPDES eReporting Tool (NeT).

Several commenters also indicated that EPA should adjust Appendix A to 40 CFR part 127 to better reflect the different requirements and terminology utilized for Phase I MS4s (i.e., those large and medium MS4s for which federal regulations were issued in 1990) and Phase II MS4s. EPA solicits comment on potential specific changes to Appendix A related to MS4s (see DCN 0108).

2. Industrial and Construction Stormwater Electronic Reporting

Stormwater runoff from construction and industrial activities can have a significant impact on water quality. As stormwater flows over a construction or industrial site, it can pick up pollutants like sediment, debris, and chemicals and transport these to a nearby storm sewer system or directly to a river, lake, or coastal water. The proposed rule requires construction operators and industrial facilities seeking coverage by an NPDES permit or a waiver from having to have NPDES permit coverage to electronically submit data.

In the preamble to the proposed rule (pp. 46025-46027) and in the proposed regulatory text [40 CFR 127.11(b)], EPA stated that operators of regulated construction sites and industrial

facilities would be required to electronically submit NOIs for coverage under a NPDES general permit. Under the proposed rule authorized NPDES programs would also electronically process data from paper NPDES individual permit applications submitted by construction operators (see Appendix A). In total, this data includes certain categories of industrial activities and large construction sites regulated by the Phase I stormwater regulations promulgated in 1990 and small construction sites identified in the Phase II stormwater regulations promulgated in 1999. These regulated entities may already be required by their permits to electronically submit DMRs. In a separate data submission, the authorized NPDES program would also share additional information (e.g., basic facility, permit, and construction and industrial stormwater information) with EPA from individual NPDES permit applications and waiver or exclusion from NPDES permitting determinations.

During the public comment period, some commenters indicated that the universe of NPDES-regulated construction sites was large and changing often as sites were completed. These commenters had concerns about how electronic reporting would work for this large and changing universe of NPDES-regulated entities. In particular, some of these commenters noted the difficulty in getting construction operators to apply for and maintain electronic signatures for use with CROMERR electronic reporting systems. As an alternative to use of a CROMERR electronic reporting system one commenter suggested EPA allow NPDES programs the possibility of using automatic identification and data capture technology [e.g., two dimensional barcodes such as Quick Response (QR) codes, optical character recognition]. For example, a potential user could complete an online form and then print out a paper copy of the form with a two-dimensional barcode or in a format that can be used by an optical character reader. The potential user would then certify these data as correct by signing this paper print-out in ink. The

use of this data capture technology could enable a NPDES-regulated entity to submit NPDES program data on paper with a “wet-ink” signature and have the NPDES program data structured to allow easy data importation into the state data system and subsequent sharing with EPA. This would mean that the state would need to procure and manage this automatic identification and data capture technology, maintain the paper submission with the NPDES program data and “wet-ink” signature, and train potential users; however, some states have suggested this option may be less burdensome than requiring all construction stormwater NPDES-regulated entities to obtain and maintain a digital signature.

Some commenters suggested that EPA adjust the minimum set of federal NPDES data (Appendix A to 40 CFR part 127) to better distinguish between construction stormwater and industrial stormwater data elements as well as required data for individual application versus NOIs for coverage under a general permit. EPA solicits comments on these potential changes to Appendix A (see DCN 0108).

E. Economic Analysis

EPA received numerous comments related to its economic analysis of the incremental costs associated with the proposed rule. Commenters include state environmental agencies, municipalities, private industry, and trade groups and associations. The majority of the comments focused on rule implementation costs, data entry burden, dual reporting requirements, benefits of the rule, and impacts on small entities.

Commenters expressed concern that the economic analysis may not accurately reflect the financial impact on states because it excludes or underestimates costs for information technology (IT) system development and upgrades; annual IT maintenance and operation (e.g., a hotline for NPDES-regulated entities; password resets; system maintenance); outreach and training for

NPDES-regulated entities; training of program staff; and revisions to statutes or regulations to implement the proposed rule.

A number of commenters also suggested that the Economic Analysis underestimated the costs to NPDES-regulated entities. For example, a number of larger companies, municipalities, and sanitation districts indicate that they would need to upgrade their data management systems to be compatible with the state's or EPA's new electronic system. They also expressed concern that the analysis underestimated costs to NPDES-regulated entities operating in multiple states, because they will need to generate customized reports related to permit conditions and state formatting requirements.

Small entities with NPDES permits such as small municipalities, CAFOs, and construction firms stated that the analysis did not take into account that some NPDES-regulated entities may need to buy a computer and obtain Internet access or travel to a site (e.g., local library) with public access to computers in order to electronically enter and submit the required data. EPA notes that some of these facilities may be eligible for temporary waivers. Some commenters also noted that electronic data entry could be more difficult and time-consuming than writing data on paper, especially for entities that do not have extensive computer experience. Commenters indicated that attending trainings for the electronic systems could be a burden to small entities.

Some NPDES-regulated entities expressed concern that they could be designing their internal data management systems and procedures for electronic reporting directly to EPA and then potentially redesigning them for a different state system at a later time if the Initial Recipient changes.

Some commenters also questioned the benefits associated with the proposed rule. They argued that the reason that most states have not expanded electronic reporting to NOIs and program reports is because electronic reporting on seldom-reported documents (such as once a year reporting or once every five year No Exposure Certifications) or simple but very frequently received documents (such as Notices of Termination for construction stormwater general permits) will require more ad-hoc time and staff than accepting such documents via FAX, as PDFs via e-mail, or as a hard copy. Some commenters also disagreed with EPA's analysis that the rule will result in improvements in water quality and increases in permittee compliance due to better awareness of compliance status and public scrutiny.

EPA received few data from commenters that can be used to update its economic analysis. EPA solicits additional data and information to inform the economic analysis supporting this rule (see EPA-HQ-OECA-2009-0274-0135). For example, EPA solicits data on the savings due to the more efficient form preparation and processing (including postage savings) as well as savings related to improved data quality as electronic reporting tools will include the ability to check for certain types of errors.

EPA received a number of comments regarding the proposed rule's potential Federalism implications, expressing concern that the proposal could infringe upon the lead role of authorized states, tribes, and territories. EPA wants to clarify that it does not intend to change or infringe upon the lead role of authorized states, tribes, and territories. The purpose of the proposed rule is to shift the collection and management of information from NPDES forms and reports from a paper-based system to an electronic-based system. The proposed rule does not change the well-established relationship between EPA and authorized state, tribal, and territorial programs as these authorized programs will continue to be the lead in all aspects of the NPDES program

including permitting, inspections, compliance determinations, and enforcement actions. Under the existing regulatory scheme, authorized states, tribes, territories are already required to collect the information covered by this rule from NPDES-regulated entities and make it available to EPA. The main focus of the proposed rule is to have that information submitted electronically, saving time and money for states as well as the regulated community. EPA notes that close coordination and discussion with states about the best way to move towards the shared goal of shifting to electronic reporting is very important and EPA has gone beyond just complying with the Presidential Executive Order that requires EPA to work collaboratively with states and local governments. Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” EPA and several authorized state NPDES programs are regularly holding discussions and technical exchanges on all aspects of the rulemaking (see DCN 0111) and these discussions have meaningfully informed several aspects of this supplemental notice. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on the proposed rule and this supplemental notice from state and local officials. EPA will continue to consult with state and local officials throughout the rule development process to ensure they have meaningful and timely opportunities for input.

F. Waivers

In the preamble to the proposed rule, EPA introduced the concept of temporary waivers from electronic reporting of NPDES information. As described in the proposed rule at 40 CFR 127.15, these temporary waivers would be made available at the discretion of the authorized

NPDES program (and subject to EPA review) in situations where regulated facilities lacked sufficient broadband availability. The process for granting such temporary waivers from electronic reporting is described in the proposed regulation at 40 CFR 127.24. Authorized NPDES programs would be required to enter the hard-copy NPDES information submitted by facilities with waivers into the state or federal NPDES data system and share it with EPA. Under the proposal, temporary waivers would be available for one year at a time. EPA requested comment on the need for such temporary waivers, possible options for such waivers, and on the possibility of temporary waivers for religious reasons.

During the public comment period for the proposed rule, EPA received several comments on temporary waivers. The majority of the comments on this topic supported the overall concept of temporary waivers from NPDES electronic reporting; three commenters disagreed. Commenters suggested that EPA should make permanent waivers for NPDES-regulated entities located in religious communities (e.g., Amish, Mennonite, and Hutterite). Other comments indicated support for making temporary waivers automatic in certain locations (e.g., areas where less than 10 percent of the population has sufficient broadband availability). Commenters expressed support for waivers that would have a longer duration than the one-year renewable timeframe identified in the proposed rule. Several commenters suggested that waivers should also be made available for certain circumstances beyond broadband availability issues, such as undue burden or cost. States also requested that they be provided with more flexibility in providing waivers from electronic reporting. A few commenters also suggested that EPA make the determinations of temporary waiver eligibility rather than the states, even if the state has authorization to implement the NPDES program. As described in Section IV, EPA solicits

comment on temporary waivers and permanent waivers for NPDES-regulated entities located in religious communities.

G. Miscellaneous Issues

This section describes other issues raised by commenters.

1. Electronic Reporting for the Pesticides General Permit and Vessels General Permit

Several commenters had questions regarding the application of the proposed rule to regulated entities subject to EPA's Pesticides General Permit and Vessels General Permit. EPA provides NPDES permit coverage for pesticide applicators where EPA is the permitting authority and vessel operators nationwide. These permits predate the proposed NPDES Electronic Reporting Rule; however, EPA has developed an electronic reporting system for these regulated entities to submit Notices of Intent (NOIs) for coverage under these general permits. EPA currently allows operators to request a waiver from electronic reporting based on an undue burden or expense associated with electronic reporting (see DCN 0112). There are no additional costs to EPA or the operators regulated by EPA's pesticide applicators and vessels general permits with implementation of the proposed rule as nearly all of these regulated entities are already using EPA's electronic reporting system. EPA will incorporate data on pesticide applicators regulated by state permits into the economic analysis.

EPA is not proposing to exempt these two permits from the NPDES Electronic Reporting Rule. In particular, EPA's General Permit regulations (40 CFR 122.28) apply to all general permits and EPA's proposed revisions to this regulatory language that implement electronic reporting do not exclude pesticide applicators or vessel operators (or any other sector or general permit). EPA will require electronic reporting of general permit reports (i.e., NOIs, NOTs, LEWs, and NECs) and DMRs (if required by the NPDES permit) when it re-issues these permits

after the effective date of the final rule. EPA intends to clarify this in the final rule and supporting documentation.

2. Modification of Data Elements in Appendix A

In response to public comments on the proposed rule, EPA reviewed the minimum set of federal NPDES data (Appendix A to 40 CFR part 127) and is seeking comment on potential changes to some of these data elements (see DCN 0108). Additionally, EPA is seeking comment on including two data elements that support the Clean Watersheds Needs Survey, which is conducted by EPA under authority of Sections 205(a) and 516 of the Clean Water Act. These changes would reduce burden on states by eliminating most of the need for EPA to collect these two data elements from states as part of its quadrennial survey. These two POTW data elements are: (1) POTW Wastewater Treatment Technology Level Description [The highest level of treatment (e.g., primary equivalent to secondary, secondary, advanced, other) that the POTW provides at each outfall]; and (2) POTW Wastewater Treatment Technology Unit Operations [The treatment technology unit process information at each outfall for POTWs greater than 10 MGD]. Example wastewater treatment technology level descriptions and unit operations are provided in the docket (see DCN 0113).

3. Biosolids Annual Report

Several EPA Regions are using the DMR form to collect data for the Biosolids Annual Report as required by EPA regulations.⁷ These regulations require that all Publicly Owned Treatment Works (POTWs) servicing a population greater than 10,000, having a design flow rate greater than one million gallons per day, or designated as Class I facilities submit an annual

⁷ See “Standards for the Use or Disposal of Sewage Sludge,” 40 CFR part 503.

report to the permitting authority every year on February 19th. In particular, EPA Region 6 is using the NetDMR electronic reporting system to collect data for the Biosolids Annual Report from facilities in Region 6 states (see DCN 0114 and 0115). EPA solicits comment on the practicality of using the DMR form to collect data for the Biosolids Annual Report. EPA notes that using the DMR form may be difficult to capture specific information related to pathogen reduction methods, vector attraction reduction methods, cumulative and annual loading rates, incineration related data, and site restrictions. EPA notes that the use of the DMR form to report Biosolid Annual Report data, while more efficient, may reduce the ability of the authorized NPDES program to determine facility-level compliance. EPA also solicits comment on allowing POTWs to use state eDMR systems to submit their Biosolids Annual Report when the state is not authorized for the biosolids program.⁸

EPA also solicits comment on changing the deadline for submission of these Biosolids Annual Reports from Phase 2 (two years after the effective date of the final rule) to Phase 1 (one year after the effective date of the final rule). EPA notes that only eight states are authorized to run the Federal Biosolids Program (40 CFR part 503). This means that EPA implements the biosolids program and collects these annual reports for 42 states as well as tribes and territories.

In addition, EPA Region 7 (Kansas City, KS) is the EPA National Biosolids Center of Excellence and this center is dedicated to creating efficiencies in the Federal Biosolids Program. EPA's National Biosolids Center coordinates all assistance to states and NPDES regulated entities on the Federal Biosolids Program and collects and reviews Biosolids Annual Reports for all facilities in the 42 states as well as tribes and territories where EPA implements the NPDES

⁸ EPA has authorized eight states to run the Federal biosolids program (40 C.F.R part 503). These eight states are Arizona, Michigan, Oklahoma, Oregon, South Dakota, Texas, Utah, and Wisconsin.

program for biosolids. This EPA office is capable of standardizing the Annual Biosolids Report for those 42 states, tribes, and territories, and providing individual help for each of the eight authorized states in order to resolve any outstanding implementation issues (e.g., State Readiness Criteria) within the first year of implementation of the rule. EPA would like to realize the many benefits of electronic reporting for the Annual Biosolids Report as soon as possible and solicits comment on changing the deadline for submission of these Biosolids Annual Reports from Phase 2 to Phase 1.

IV. Matters for Which Comments Are Sought

The following sections identify specific issues on which EPA invites comment. Please note that there is no need to re-submit comments previously submitted to EPA's docket for this rulemaking. You may find the following suggestions helpful when preparing your comments to EPA on the proposed rule and this notice:

- To ensure proper receipt by EPA, identify the appropriate docket identification number (found in the Addresses section of this *Federal Register* notice) in the subject line on the first page of your comments or response.
- To help ensure that your submission is routed correctly, on the first page of your submission, provide the name of the proposed rule; date of the *Federal Register* notice; and the *Federal Register* citation (e.g., ____ [volume number] FR ____ [page number]) related to your comments or response.
- Clearly identify those sections of the preamble or the proposed rule on which you are commenting.
- Explain why you agree or disagree, and explain your views as clearly as possible.

- Describe clearly any assumptions that you used as a basis for your comments.
- Provide any technical information and/or data that you used to support your views.
- If you provide any estimate of potential economic burdens or costs, please carefully consider the information provided in the preamble to the proposed rule, particularly in Sections VII (Non-Monetary Benefits and Economic Analysis), VIII.A (Regulatory Planning and Review), VIII.C (Regulatory Flexibility Act), and IV.D (Data Considerations), and provide detailed explanations of how you arrived at your estimate.
- Provide specific examples to illustrate your comments or concerns.
- Clearly identify your preferences and, if applicable, offer feasible alternatives that will effectively meet the same goals.

Submit your comments as directed in the Addresses section of this *Federal Register* notice before the comment period deadline identified in the Dates section of this notice.

A. Implementation Plan

1. EPA solicits comment from the states on making the Initial Recipient determination in Section 127.27(a) an ‘opt-out’ process for an authorized state, tribe, or territory NPDES programs. Under this process, an authorized NPDES program would need to notify EPA within 120 days of the effective date of the final rule if it wishes EPA to be the Initial Recipient for a particular data group. If EPA receives no such notification, EPA would designate the state, tribe, or territorial NPDES program as the Initial Recipient.
2. EPA solicits comment on additional means for providing notice to NPDES regulated entities on the Initial Recipient status.

3. In order to provide a clearer distinction between the Initial Recipient and State Readiness Criteria terms, EPA solicits comment on eliminating the third factor in the State Readiness Criteria (i.e., Initial Recipient Status).
4. EPA solicits comment on different options for using a phased approach or longer interval before applying participation rate as part of the State Readiness Criteria. For example, EPA could require increasing participation rates over a longer implementation period (e.g., 30 percent participation rate for Year 1, 60 percent participation rate for Year 2, and 90 percent participation rate for Year 3).
5. EPA solicits comment on the concept of using EPA's CWA authority through use of an ICR to require NPDES-regulated entities to electronically submit their NPDES program data to their authorized state, tribe, or territory as a "fill in the gaps" measure where the authorized NPDES program has a CROMERR-approved electronic tool. The proposed rule had NPDES-regulated entities reporting these data to EPA. EPA would retain the ability to assess and pursue enforcement actions on NPDES-regulated entities that fail to comply with the data submission requirements.
6. EPA solicits comment on extending or adding additional phasing to the implementation period, linking implementation of electronic reporting to the NPDES permit cycle for entities with NPDES permits, or allowing states to extend their implementation of electronic reporting to a specific date following EPA approval of their individual implementation plan. These implementation plans would need to be approved by the authorized NPDES Director (as defined in 40 CFR 122.2).

7. EPA solicits comment on the option to calculate for each authorized NPDES program one DMR electronic submission participant rate for individually permitted facilities and another DMR electronic submission participant rate for general permit covered facilities.
8. EPA solicits comments on practical ways to streamline the implementation of the approval process for CROMERR within the parameters of the existing CROMERR regulation.
9. EPA solicits comment on the option of EPA using its CWA authority through use of an ICR to require facilities operating under backlogged permits to electronically submit their NPDES program data.

B. Stormwater Sector

1. EPA solicits comment on its proposed approach to use a combination of drop-down lists and text fields in its electronic reporting systems to effectively characterize the activities of the MS4 facilities for electronic reporting of NOIs and program reports.
2. EPA solicits comment on providing flexibility in the final rule for the construction stormwater program that would allow authorized NPDES programs the possibility of using automatic identification and data capture technology (e.g., two dimensional barcodes, optical character recognition) instead of requiring construction site operators to secure and maintain electronic signature credentials for use with CROMERR compliant electronic reporting systems.
3. EPA also solicits comment on changes to stormwater data elements in Appendix A (see DCN 0108).

C. Concentrated Animal Feeding Operations (CAFO) Sector

1. EPA solicits comment on the approach of removing facility specific information from EPA's ECHO webpage about non-permitted CAFO/AFOs that state inspectors found were not discharging and do not require an NPDES permit. As discussed in this notice, EPA is proposing to mask facility specific information on these unpermitted CAFO/AFOs and only show the total number of these masked facilities by state. EPA plans to enhance its data system (ICIS-NPDES) to provide states and Regions with the necessary capability to identify these non-permitted CAFO/AFOs that do not require an NPDES permit. In particular, after these enhancements States and Regions will need to enter or verify the following data into ICIS-NPDES for each non-permitted CAFO/AFO that does not require an NPDES permit: (1) unpermitted CAFO/AFO has an "Unpermitted ID" with no associated "NPDES Permit ID;" (2) unpermitted CAFO/AFO has a "CAFO Permit Component;" and (3) unpermitted CAFO/AFO has no CWA NPDES violations. If these three conditions are met EPA will remove facility specific information for these facilities from EPA's ECHO webpage one year after the effective date of the final rule. EPA solicits comment on the timing of this proposed change.
2. As previously discussed in Section III.C, agricultural stakeholders focused their comments on the public availability of Appendix A data related to CAFOs. EPA emphasizes that this rule would not require any information to be disclosed that is not already available to EPA and the public pursuant to the Clean Water Act.
3. EPA is soliciting comment on a few changes to CAFO data elements in Appendix A to Part 127 (see DCN 0108). EPA believes that these edits, generated from comments by

states, make the revised Appendix A more clear and implementable (see DCN 0128 through 0142).

D. Economic Analysis

1. EPA solicits comment on what NPDES program information technology upgrades might be necessary for regulatory authorities or NPDES-regulated entities. For example, EPA seeks information on the labor hours and capital equipment and/or software needed to upgrade or expand state batch system databases to store all Appendix A data. For labor hour estimates, please provide the labor category for the hours needed. Please also provide information on the number of Appendix A data elements for which the upgrade/expansion is needed.
2. EPA solicits comment on the expected costs for CROMERR implementation as it specifically relates to the proposed NPDES Electronic Reporting Rule. For example, please provide estimates of burden (including labor category) and costs for using EPA's electronic reporting systems.
3. EPA solicits comment on the expected costs for eNOI and eProgram Report training. For example, please provide the amount of training (in labor hours) that NPDES-regulated entities and states would require in the use of electronic systems for NOIs and program reports, including the labor categories (e.g., managerial, technical, clerk, etc.). EPA will be training states that elect to use EPA's electronic reporting systems on how to use these tools and how to train potential users. EPA will work with states on the training needs of potential users and conduct some training sessions at the request of the states. States will

also be responsible for conducting regular training sessions for NPDES-regulated entities on how to use EPA's electronic reporting systems.⁹

4. EPA solicits comment on costs related to computer and Internet access for NPDES-regulated entities. For example, EPA solicits comment and information on the number or percent of NPDES-regulated entities that do not currently have readily available access to a computer and/or the Internet. Please also provide the estimated cost of a computer and/or Internet access and the labor hours and labor categories as well as any travel expenses related to offsite computer and Internet access (e.g., local public library).
5. EPA solicits comment on costs related the use of existing electronic systems. For example, EPA asks authorized NPDES programs to provide information on the utilization of existing electronic systems in terms of the percent of major and minor permittees (by individual and general permit covered facilities) and other NPDES-regulated entities actively reporting to DMR, NOIs, and/or program report systems.
6. EPA solicits comments on the difference in labor hours associated with the current regulatory requirement for states to produce an annual noncompliance report (ANCR) versus the labor hours that would be associated with a state's review of non-major noncompliance information in the proposed quarterly NPDES noncompliance report (NNCR) generated by EPA.

⁹ See the economic analysis for the proposed rule for more information on these training sessions (EPA-HQ-OECA-2009-0274-0135).

E. Waivers

1. EPA solicits comment on whether waivers from NPDES electronic reporting should be automatic for counties where only a small fraction of the population (e.g., less than 10 percent) has sufficient broadband availability.
2. EPA solicits comment on the appropriate effective timeframe for these “automatic” waivers. Should there be a review period for these “automatic” waivers?
3. EPA solicits comment on whether temporary waivers should extend for the life of the NPDES permit or another timeframe.
4. EPA solicits comment on whether EPA should allow authorized NPDES programs to grant a temporary waiver based on the NPDES-regulated entity’s lack of technical expertise and what criteria, if any, the authorized program should use in making these decisions.
5. EPA solicits comment on whether it should make available in the final rule permanent waivers for NPDES-regulated entities located in religious communities where electronic reporting would not be consistent with the community’s religious beliefs (e.g., Amish, Mennonite, and Hutterite).

F. Miscellaneous Issues

1. EPA is soliciting comment on how to improve public accessibility and usability of the data. EPA notes that this proposed rule does not change the Agency’s public disclosure regulations (40 CFR 2).

2. EPA reviewed the minimum set of federal NPDES data (Appendix A to 40 CFR part 127) and is seeking comment on potential changes to some of these data elements (see DCN 0108).
3. EPA solicits comment on the practicality of using the DMR form to collect data for the Biosolids Annual Report. EPA also solicits comment on allowing POTWs to use state eDMR systems to submit their Biosolids Annual Report when the state is not authorized for the biosolids program.
4. EPA also solicits comment on changing the deadline for submission of these Biosolids Annual Reports from Phase 2 (two years after the effective date of the final rule) to Phase 1 (one year after the effective date of the final rule).

V. Outreach

Section VI of the proposed rule details EPA extensive outreach efforts prior to the proposed rule. EPA continued this outreach during the public comment period on the proposed rule (DCN 0111). In particular, EPA held over 30 webinars and meetings with over 1,200 people to discuss the proposed rule.

Upon publication of this notice, EPA will provide a new comment period and will conduct additional stakeholders meetings to further discuss and refine particular aspects of the rule prior to promulgation. Outreach to stakeholders will continue to be supported through the NPDES Electronic Reporting Rule website; however, the website may be expanded to include more robust rule schedules as the rule nears promulgation, as well as additional rule documentation that may or may not be included as part of the formal docket library. Stakeholders

that wish to hold a meeting with EPA should send an email to Messrs. Hudock or Johnston (see **FOR FURTHER INFORMATION CONTACT** section).

Finally, EPA would also continue to provide technical assistance and support to states, tribes, and territories during the transition to electronic reporting. Outreach from EPA to the states, tribes, and territories may be very useful in the identification of specific needs and the development of such assistance, support, and funding. EPA also solicits comment and suggestions on how to reach and inform the broad range of facilities affected by this proposed rulemaking.

VI. Executive Orders 12866 and 13563

Under Executive Order (EO) 12866 [58 FR 51735 (October 4, 1993)] this action is a “significant regulatory action.” Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 and any changes made in response to OMB recommendations have been documented in the docket for this action.

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 127

Administrative practice and procedure, Electronic reporting requirements, Water pollution control.

40 CFR Part 403

Administrative practice and procedure, Compliance monitoring, Enforcement program and activities, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 501

Administrative practice and procedure, Indians-lands, Intergovernmental relations, Penalties, requirements, Sewage disposal.

40 CFR Part 503

Reporting and recordkeeping requirements, Sewage disposal.

Dated: November 18, 2014.

Cynthia Giles, Assistant Administrator,

Office of Enforcement and Compliance Assurance.

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